

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----:  
WAYNE BALIGA, :  
Plaintiff, : Case No.: 18-cv-11642  
  
v. :  
  
LINK MOTION INC., et al., : New York, New York  
Defendants. : June 27, 2023  
  
-----: CONFERENCE

TRANSCRIPT OF STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE VALERIE FIGUEREDO  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE DEPUTY CLERK: Good afternoon. This is  
2 the matter of Baliga, et al. v. Link Motion Inc.  
3 et al.; Case Number 18-cv-11642. The Honorable  
4 Valerie Figueredo presiding.

5 Counsel, please state your appearances for  
6 the record, starting with counsel for the receiver.

7 MR. KUSHNER: Good afternoon, Your Honor.  
8 My name is Amiad Kushner from Seiden Law. We  
9 represent Robert Seiden in his capacity as the  
10 receiver, and with me are my colleagues from  
11 Seiden Law. To my right is Jen Blecher. To my left  
12 is Tony Zhang. And I just want to note for the  
13 record that Steven Seiden from the receiver's office  
14 is watching in the galley.

15 THE COURT: Good afternoon, everyone.

16 MR. MALONEY: Good afternoon, Your Honor.  
17 This is Michael Maloney from Felicello Law P.C. on  
18 behalf of defendant, Vincent Wenyong Shi. And with  
19 me are my colleagues, Roseanne Felicello and Kristie  
20 Blase.

21 THE COURT: Good afternoon.

22 MR. MALONEY: Thank you.

23 MR. STRAW: Good afternoon, Your Honor.  
24 Brian Straw on behalf of plaintiff, Wayne Baliga.

25 THE COURT: Good afternoon, Mr. Straw.

1 You're welcome to stay there, but if you want to  
2 take a seat, that's also cool too. It's up to you.

3 MR. STRAW: I'm happy standing. Thank you.

4 THE COURT: Okay. Perfect.

5 I usually don't use the computer during  
6 arguments or anything, but because there were so  
7 many voluminous appendixes to the various letters, I  
8 printed the letters, but, obviously, have tried not  
9 to kill unnecessary trees, so I'm just going to log  
10 into the computer.

11 But in the meantime, the reason I asked for  
12 the conference on this was, you know, this case has  
13 been going on for a while. And at least for a good  
14 portion of it, it was under Magistrate Judge Freeman  
15 and, obviously, Judge Marrero. But this is all to  
16 say that a lot of what the parties argued in their  
17 accounting papers was, you know, not something that  
18 I had any familiarity with, so there were just a lot  
19 of questions that sort of arose.

20 Mr. Kushner, I'm happy to hear you out. I  
21 did have -- there was one topic that I really wanted  
22 to flesh out that I had questions on, so I can go  
23 ahead and start the discussion there, and then if  
24 there's -- you know, I'm sure that will organically  
25 lead to other questions. And then if there's

1 anything you think would be helpful to add on,  
2 I'm -- you know, I'm happy to hear everyone out.  
3 But the first thing that I was curious about was --  
4 you know, we looked at all the cases you cited for  
5 piercing the corporate veil. And, again, this seems  
6 to be something that arises in the context where a  
7 party's raising it as a cross claim or a claim in  
8 the complaint or a counterclaim. This seems to --  
9 and, again, correct me if I'm wrong, but it seems  
10 this is coming up not in the complaint, but in terms  
11 of, you know, this motion for an accounting of the  
12 expenses.

13 Do you have any case that would allow us  
14 to, I guess, look at the factors for piercing the  
15 corporate veil where the allegation is not -- you  
16 know, I -- an accounting is a remedy, right? It's a  
17 type of relief. And it struck me as, from the cases  
18 that you cite, that for piercing the corporate veil,  
19 you're really looking at needing to have asserted a  
20 claim.

21 That was long winded and I'm sorry. I  
22 apologize.

23 MR. KUSHNER: No. Your Honor, thank you.  
24 No, I understand the question.

25 I think it's true that, as a general

1 matter, what we're asking for is not the typical  
2 fact pattern. Often, receivers are brought in and  
3 they have funding and they assert pleadings in which  
4 piercing the corporate veil is one of the requested  
5 forms of relief. That's not where we are. So we  
6 have not cited and we're not aware of a case in  
7 which a court pierced the corporate veil in the  
8 context of an accounting without there have --  
9 without there being a prior pleading to which the  
10 receiver can refer to.

11 That said, doesn't mean that you can't  
12 grant that relief. I think that you may get to the  
13 relief we're seeking in two ways. One, you could  
14 find that, notwithstanding the fact that the  
15 receiver has not actually brought a pleading  
16 asserting a claim for piercing the corporate veil  
17 because this is an accounting. And one of the  
18 functions of the Court, in determining or in  
19 approving an accounting, is figuring out are the  
20 revenues and expenses accounted for properly. And  
21 if they're -- one of the parties has caused the  
22 receiver to expend funds more than would otherwise  
23 be required under the circumstances, or, perhaps, as  
24 we allege, one of the parties has looted the estate  
25 in a manner that frustrates the receiver's

1 activities, we think the Court, in the context of an  
2 accounting, can order the party that looted the  
3 funds of the estate and frustrated the receiver from  
4 performing his duties. We think that's within the  
5 authority of the Court. But even if --

6 THE COURT: But can I just ask you a  
7 question? When you say it's "within the authority  
8 of the Court," is that because there's some -- I  
9 guess it would have to be as a matter of equity, but  
10 is there some case or something you could point me  
11 to to support that?

12 MR. KUSHNER: The -- I don't know the case  
13 right now, Your Honor. You know, we could search  
14 for such a case. We certainly have cited cases  
15 piercing the corporate veil in the receivership  
16 context. But Your Honor is correct that those --  
17 you know, the *Fannie Mae* case, for example, involved  
18 a pleading.

19 So, sitting here today, I'm not aware of a  
20 case that pierced the corporate veil without an  
21 actual claim asserted in a pleading for piercing the  
22 corporate veil, but I don't think that that -- the  
23 fact that there's no case law precedent standing  
24 alone is a bar to such a finding, but...

25 THE COURT: But let me ask you even more

1 broadly, like, because it sounded like you were  
2 saying -- you know, putting aside the corporate  
3 veil, it sounded like you were potentially making  
4 some type of, like, equitable remedy argument that  
5 you thought it could potentially be in the Court's  
6 equitable powers to grant this type of remedy.

7 So even if you don't have a case on -- that  
8 pierces the corporate veil, is there any other type  
9 of case in this accounting sphere where potentially  
10 someone got the damages -- the unrecoverable amount  
11 that had -- once you showed it's been looted or  
12 mismanaged or it frustrated the efforts of the  
13 receiver that has -- that somehow there's an  
14 individual who's gotten personal liability aside  
15 from the corporate -- the piercing the corporate  
16 veil context?

17 MR. KUSHNER: Your Honor is correct that we  
18 are relying on principles of equity. And we believe  
19 that the Court, sitting in equity, has the authority  
20 to effectively pierce the corporate veil, but I  
21 don't have a case right now. We can look for such a  
22 case and submit it to Your Honor.

23 But separate from that, Your Honor, we  
24 believe that, alternatively, the Court has the  
25 authority, the inherent authority, to enforce its

1 own orders. In this case, the Court issued the  
2 receivership order. It ordered that the company be  
3 turned over to the receiver, including the books and  
4 records, control of all the company's subsidiaries.  
5 And we've provided you with a lot of evidence that  
6 Mr. Shi has frustrated the Court's receivership  
7 order.

8 Just take one example. The -- all this  
9 paper that we've expended on, the missing  
10 \$89 million, we allege that Shi effectively looted  
11 that money from the company. But critically, Your  
12 Honor, it was done after the receivership order was  
13 issued by the Court. Talking about mid- to late  
14 2019. So if Your Honor finds, for example, that, in  
15 violation of the receivership order, the defendant,  
16 Shi, looted the company and stole tens of millions  
17 of dollars, Your Honor has the inherent authority,  
18 in, sort of, determining a remedy for that  
19 violation, to impose some type of liability upon  
20 Mr. Shi.

21 THE COURT: You're almost arguing for a  
22 sanction, then?

23 MR. KUSHNER: Yes.

24 THE COURT: Maybe -- so I recognize this is  
25 a little bit unethical, but since we're just focused

1 on this topic of the ability to provide this type of  
2 relief, the piercing the corporate veil, or  
3 potentially something more loosely described as a  
4 sanction, before we switch gears to talk about some  
5 of the other issues, I was going to just maybe see  
6 if -- Mr. Maloney, if you wanted to respond. We  
7 could address this topic as -- we can go back and  
8 forth as often as necessary, but then we could  
9 switch to some other topics. This is -- this itself  
10 is its own discrete issue that I think we could just  
11 resolve first and then move on.

12 MR. MALONEY: Yes. Thank you, Your Honor.

13 As Mr. Kushner admitted, you know, there's  
14 not really a case that we're aware of that supports  
15 the position that a piercing claim can be made in  
16 this context without the existence of a pleading.

17 With respect to the argument that the Court  
18 has an inherent equitable power to award this  
19 relief, the cases that we've cited in our papers in  
20 the context of an accounting for a receivership say  
21 that the Court has the equitable power to charge the  
22 plaintiff with the cost of the unfunded  
23 receivership. We've not seen a case saying the  
24 Court has the equitable power to, out of the blue,  
25 pierce a corporate veil to hold another person

1     liable for cost of the receivership, and we don't  
2     think the Court should make new law on that point.

3             The other thing here is that there's a  
4     question of fundamental fairness, right. If this is  
5     a claim that the receiver wants to bring now at this  
6     stage in the case -- this first came up, you know, I  
7     think it was in January of this year. You know,  
8     it's been five years into the case, right. Why  
9     wasn't this brought earlier? Dr. Shi should have  
10    had an opportunity to address this issue earlier in  
11    the case if the receiver wanted to pursue this sort  
12    of relief. That's the purpose of the process of  
13    pleading. So Dr. Shi's been deprived of that  
14    opportunity.

15            The other issue here is that -- there's a  
16    few other issues that we want to mention. First of  
17    all, we think the piercing claim that the receiver  
18    is trying to make here is not available under Cayman  
19    law. LKM is a Cayman company, and so, therefore,  
20    any piercing claim must be governed by Cayman law  
21    under the internal affairs doctrine. And as we  
22    mentioned in our brief filed at Docket 393, this  
23    type of piercing is not available under Cayman law.

24            THE COURT: Is there really an -- so you  
25    seem to suggest there is really a difference between

1 Cayman Islands law and New York law on this.

2 MR. MALONEY: Yes. Yes, Your Honor.

3 THE COURT: And the one case you cite to is  
4 what you want to rely on? I know in your brief  
5 there's a case from --

6 MR. MALONEY: We've cited a case,  
7 *Hurstwood*, from the UK. As you, I'm sure, have  
8 read, Cayman Islands is an English law jurisdiction.  
9 They tend to look to decisions in other English  
10 civil law jurisdictions. We found this *Hurstwood*  
11 case. We're happy to do some more research to see  
12 if we can find some other cases directly on point,  
13 but we think the *Hurstwood* case and the other  
14 arguments we've made here are sufficient to make our  
15 point that this type of piercing is not available  
16 under Cayman Islands law.

17 The other issue is that the receiver cannot  
18 plead the requisite elements, even under New York  
19 law. We've addressed that in the brief. I won't go  
20 into that in detail.

21 I think also we should talk about the  
22 fundamental factual contentions that the receiver  
23 makes here, which is this whole looting claim. And  
24 I -- you know, this has been a contention that the  
25 receiver and plaintiff have made throughout the

1 case, but fundamentally speaking, their records do  
2 not show any transfers to Dr. Shi. They don't show  
3 any transfers to any company controlled by Dr. Shi.  
4 The person in control of these accounts and  
5 companies at the period in time in question was  
6 Xu Zemin. It's our contention that Mr. Xu had his  
7 own independent interest in protecting his legal  
8 rights as a legal representative of these companies.

9 The other thing is that the receiver and  
10 Guo's story keeps changing on this point. You know,  
11 as late as June 1st, Guo submitted a declaration in  
12 which he claimed that Dr. Shi continued to control  
13 NQ Mobile. And after you, Your Honor, issued your  
14 June 13th order requesting follow-up, Guo submitted  
15 a declaration on the 23rd in which he now admits for  
16 the first time that he has controlled all the  
17 "onshore entities" since 2019. The judicial  
18 opinions that Mr. Guo submitted also support this  
19 fact.

20 In some of the receiver's earlier  
21 submissions in this case, they made statements that  
22 are inconsistent with what they -- they're making  
23 now. You know, on July 19, 2021 at Docket 239, page  
24 11, Guo claimed that the funds at issue were  
25 transferred in 29 separate transfers between May to

1 November 2019. In the filing yesterday at  
2 Docket 446, they claimed that 90 percent of the  
3 funds were transferred immediately.

4 And if we dig down into the nitty-gritty  
5 details of what they're claiming, there's some  
6 really glaring inconsistencies. For example, at  
7 Docket 161 is a copy of a July 17, 2020 letter from  
8 the receiver with attachments relating to these  
9 transactions. The attachments are an excerpt of  
10 transactions in the account in question. It's not  
11 the full record, it's just an excerpt. It's -- he  
12 provides a limited translation of certain  
13 transactions.

14 And in this document at ECF page 5 --  
15 again, this is Docket 161 -- the receiver provided a  
16 chart of what he claims to be the 29 transactions  
17 that represent looting, but if you actually look at  
18 the bank record, there are transactions that come  
19 back into the account. So Guo selected, he  
20 cherry-picked transactions and added them up and  
21 claims that they were looting, but he ignored  
22 transactions back into the account. And if we look  
23 at -- let me find my citation here -- Docket 443-20,  
24 we have Guo's current recitation of his allegedly  
25 looting transactions. He refers to the same excerpt

1 of the bank transactions. He provides another  
2 chart, but this chart includes translations of  
3 transfers back into the account, but doesn't provide  
4 a sum of the net that he claims to have been  
5 "looted."

6           You know, fundamentally, his submissions  
7 are inconsistent and contradictory. There's no  
8 clear record or evidence showing that any of these  
9 funds ended up in Shi's hands. There is a record  
10 showing that the accounts were pledged to China  
11 Merchants Bank as security for a loan, that it came  
12 due in -- as early as March of 2019. And I think  
13 it's reasonable to submit to the Court that no bank  
14 anywhere would permit funds of this -- these amounts  
15 to be transferred out of these pledged accounts  
16 unless they're transferred for repayment of a loan.

17           THE COURT: Well, let me just stop you  
18 right there because I hear your argument and -- but  
19 I think we have the fundamental problem that it  
20 seems like there's no law directly on point that  
21 would allow me to even get to the merits of whether  
22 we've shown adequately fraud or looting or some type  
23 of bad act by Shi.

24           So, I guess, on this, you know, I think if  
25 there's any other case law you want to point me to

1 that allows the piercing the corporate veil in a  
2 similar procedural posture or, alternatively, where  
3 the court has considered -- I'm going to call it a  
4 sanction -- if you want to try to make that inherent  
5 authority argument and posit this as a sanction, but  
6 I think, you know, I would -- for obvious reasons, I  
7 think I -- you -- I'm going to need to see something  
8 that allows me to do it.

9 MR. KUSHNER: A brief response on that.  
10 Actually, counsel for Shi just reminded me of  
11 something really important, which is that this  
12 Court, through Judge Freeman's report and  
13 recommendation, and Judge Marrero adopting her  
14 report and recommendation, found that if the  
15 plaintiff -- sorry -- if the receiver's actions  
16 after October 2020 didn't benefit the company, the  
17 Court could charge the expenses of the receivership  
18 to the plaintiff, Baliga. One might say that  
19 there's no authority for that, either, but I think  
20 under the circumstances of the case, when you're  
21 dealing with an accounting, again, if the facts and  
22 circumstances arguably suggest that there's some  
23 party that has caused the receiver to incur a  
24 liability and somehow is at fault for that, then it  
25 would seem that there is an equitable principle that

1 allows the Court to impose liability where it may  
2 fall. And it sounds like Judge Freeman and  
3 Judge Marrero had no issue with that in theory.

4 THE COURT: Are you referring to the order  
5 from March of 2022, her report and recommendation?

6 MR. KUSHNER: I don't recall the date in  
7 front of me, but it's the report and recommendation  
8 which found that the receivership should be  
9 dissolved pending an accounting.

10 THE COURT: And you're saying that she  
11 found -- or she suggested that Baliga himself could  
12 be responsible for any expenses that were  
13 unnecessary or not for the benefit of Link Motion?

14 MR. KUSHNER: Yes. I don't have her exact  
15 words in front of me, but she did hold that,  
16 depending on whether or not the receiver's actions  
17 after October of 2020 benefited the company, Baliga  
18 could be held personally responsible. But if the  
19 actions of the receiver benefited the company, then  
20 Link Motion itself would have to bear those  
21 expenses.

22 MR. MALONEY: Your Honor, if I could  
23 respond to that single point. Mr. Kushner is  
24 correct that Judge Freeman did find that if  
25 receiver's actions after October 5, 2020 were not

1 for the benefit of the receivership, the expenses of  
2 that, those activities, could be charged to the  
3 plaintiff. And she cited federal case law to  
4 support that principle. And it's our contention  
5 that there -- the cases that Judge Freeman signed --  
6 cited there represent a line of case authority in  
7 U.S. law, and that's consistent with equitable law  
8 going back into ancient times with respect to  
9 receiverships. That theory of authority stands for  
10 the proposition that the costs of the  
11 receivership -- the question is whether the costs of  
12 the receivership are borne by the estate, the  
13 company or the person, the party who requested that  
14 the Court appoint the receiver; i.e., the plaintiff  
15 in this case. That authority does not stand for the  
16 proposition that the Court can assign the cost of  
17 the receivership to a third party or even a  
18 defendant. And I am happy to brief that issue.

19 THE COURT: No. She -- it's at page 40 of  
20 her decision --

21 MR. MALONEY: I believe it's that.

22 THE COURT: -- where she cites a  
23 Ninth Circuit case --

24 MR. MALONEY: Correct.

25 THE COURT: That makes the point that the

1 court maintained the discretion to charge the  
2 receiver's expenses either to the corporation or to  
3 the party who wrongfully obtained the receiver's  
4 appointment.

5 I think it sounds -- and, again, I'd be  
6 open if you wanted to submit a letter motion or  
7 brief this, but it sounds like, potentially, the  
8 avenue that you might want to consider is this idea  
9 of a sanction, although this is just -- this was the  
10 first time this was discussed. But it sounds like  
11 the authority on the inherent discretion, at least  
12 with regards to Judge Freeman's order, sounds like  
13 it's potentially limited to either LKM or the party  
14 who wrongfully obtained the receiver's appointment.

15 Is there anything else either side wants to  
16 say on this?

17 MR. MALONEY: Yes, there is, Your Honor.  
18 Can you give me a moment? I'm just going to look  
19 through my notes here.

20 MR. STRAW: I'd also like to interject for  
21 a moment.

22 THE COURT: Oh, sure.

23 MR. STRAW: At Docket 331, at page 19 --  
24 that's Judge Marrero's order accepting the report  
25 and recommendation -- you can see what he did on

1       this point. And he notes that as to the period  
2       after October 5, 2020, expenses that the corporation  
3       would have had to incur had there been no receiver,  
4       and expenses that convert a genuine benefit upon the  
5       corporation should be charged to it.

6               So I think that it's important as we  
7       proceed through the rest of this hearing that those  
8       expenses after October 5, 2020 under Judge Marrero's  
9       order, that either the corporation would have had to  
10      incur or that conferred a genuine benefit to the  
11      corporation should be charged to the corporation.

12             THE COURT: But I guess I'm a bit confused.  
13      I guess I don't understand the point you're trying  
14      to make, in all honesty, because I thought the  
15      corporation had no money left, or LKM, right?  
16      There's no money to pay the -- it sounds like you  
17      recovered -- you're seeking somewhere around 3.9, I  
18      think, in expenses, or you had 3.9, and there's an  
19      unfunded difference there.

20             MR. KUSHNER: It was an unfunded liability  
21      of just over 1 million at the time we submitted the  
22      accounting brief.

23             THE COURT: So I'm a little confused as to  
24      what you mean by assigning them to the corporation  
25      because it sounds like that still wouldn't give them

1 a recovery of anything.

2 MR. STRAW: My point that I'm flagging is  
3 we're getting into that point where defendant, Shi,  
4 is saying it should be charged to Baliga. And I'm  
5 highlighting that, under the judge's order, it's  
6 only assignable to Baliga where it would not have  
7 arisen but for the continuation of the receiver's  
8 appointment. And it had no -- the -- it -- the  
9 corporation -- and the corporation wouldn't have  
10 otherwise had to incur those expenses or there was  
11 no genuine benefit to the company.

12 THE COURT: Right. Yeah. I think he was  
13 just pointing -- or I understood you to just be  
14 saying, if anyone should bear the cost here, it's  
15 definitely not Shi, who's, like, a third party.  
16 It's either the corporation or the person who --  
17 like, if we can show it -- wrongfully obtained the  
18 receiver. But I don't think you were saying it  
19 would automatically go to Baliga.

20 MR. STRAW: That --

21 THE COURT: I think you were identifying  
22 the two parties under the case law that could  
23 potentially be held personally liable, LKM or  
24 Baliga, not necessarily that in this instance that  
25 should even happen.

1 MR. MALONEY: Correct. Correct.

2 THE COURT: Okay.

3 MR. MALONEY: We do contend that Baliga  
4 should bear the cost, but, correct, we -- that's my  
5 contention.

6 THE COURT: Right.

7 MR. KUSHNER: Your Honor, Shi's not --  
8 just -- he's not a third party, obviously. I mean,  
9 he's a defendant in the case, and, obviously, we've  
10 alleged that he dominates Link Motion and has  
11 orchestrated all these -- all this misconduct. So  
12 we're going to look for case law either under the  
13 sanctions prong, or if there's something in the  
14 equitable universe, so to speak, we'll send it to  
15 you. But he's --

16 THE COURT: Feel free to just -- you can go  
17 as broad as you would like, but you'd have --  
18 anything you think could support what you would like  
19 here, basically.

20 MR. KUSHNER: We will search and send you a  
21 supplemental submission on that.

22 THE COURT: Okay.

23 MR. MALONEY: Your Honor, one more point on  
24 the question of this shifting the cost of the  
25 receivership after October 5, 2020. As we

1 discussed, and as Your Honor recognized from  
2 Judge Freeman's report and recommendation, there is  
3 a line of cases that say that the expenses can be  
4 charged to the plaintiff or the party who wrongfully  
5 obtained the receivership. In this case, the  
6 question is the actions of the receivership after  
7 October 5, 2020.

8 I'd like to direct your -- the Court's  
9 attention to ECF page 97 of Docket 448-2. This was  
10 filed yesterday. This document is a translation of  
11 a record of a wire transfer made by Mr. Guo, the  
12 receiver's agent in China, to Greenberg Traurig in  
13 the amount of 50,000 U.S. dollars. The records  
14 indicate that it happened in early November 2020,  
15 shortly after Baliga dropped his derivative claims  
16 and proceeded with direct claims. And as is evident  
17 from Docket Entry 184, a few days later, on November  
18 11th, Greenberg Traurig substituted in as counsel  
19 for plaintiff, Baliga, in place of the Seiden Law  
20 firm.

21 So at this time, what we have here is Guo,  
22 an agent of the receiver, himself, an arm of the  
23 court, charged with protecting the interests of the  
24 company, paying the legal fees of a plaintiff suing  
25 the company for money damages. We think this fact

1 is relevant to the question of who bears  
2 responsibility for the cost of receivership after  
3 October 5, 2020.

4 THE COURT: What -- it was 448-2. And what  
5 was the specific page number that you referenced?

6 MR. MALONEY: This is ECF page 97 of  
7 Document 448-2 filed last evening. And the --  
8 this -- that page is the translation. The original  
9 appears at ECF page -- I apologize. I'm going to  
10 have to follow up with the -- that second ECF cite.  
11 The original is in the same document. It's --  
12 appears later in the document, and I'll follow up  
13 with that. It's a little hard to read on my copy.

14 THE COURT: Yeah, no worries.

15 Does this show when the wire transfer was  
16 actually sent? Because I don't see a date on this.

17 MR. MALONEY: So the original is a  
18 screenshot of a wire transfer record on a computer  
19 screen, and it appears in between documents that  
20 appear to be in chronological order. And it appears  
21 in between a document dated November 4, 2020 and a  
22 document dated -- let me -- I believe the next  
23 document was dated December 3, 2020.

24 THE COURT: Mr. Kushner, do you -- are --  
25 do you know what the -- the wire transfer to

1 Greenberg Traurig, was that for legal fees?

2 MR. KUSHNER: This is the first time I'm  
3 hearing about this. I don't know what that's for.  
4 We could look into it.

5 THE COURT: This was Exhibit 2 to your  
6 letter from last night.

7 MR. MALONEY: Your Honor, this is Exhibit B  
8 to the letter filed last evening at Docket 448.  
9 It's a -- it's one of the larger, voluminous ones.

10 THE COURT: Yeah. This is completely off  
11 topic, but one of the questions I did have was, at  
12 what point did the Seiden Law Group stop  
13 representing Baliga?

14 MR. KUSHNER: It was around the time that  
15 the amended complaint was filed, I believe, in  
16 October of 2020. So the complaint, as originally  
17 filed, was a derivative action, and then it was  
18 amended to remove derivative claims. At that point,  
19 Mr. Baliga hired Greenberg Traurig, and Seiden Law  
20 stopped representing Mr. Baliga and represented the  
21 receiver's office only.

22 THE COURT: Is there anything else you  
23 wanted to add, Mr. Maloney, on this, or...

24 MR. MALONEY: On that point, I think I'm  
25 fine. I also would like to submit some additional

1 case law on that issue.

2 THE COURT: On the -- on which issue?

3 MR. MALONEY: This is the issue of the  
4 authority of the Court to pierce the corporate veil  
5 under circumstances like this.

6 THE COURT: Oh, yes. Yes.

7 MR. MALONEY: I know Your Honor has  
8 mentioned the -- this concept of sanctions. I mean,  
9 I also would like an opportunity to be heard on  
10 that, but it's hard to respond because no  
11 application has been made.

12 THE COURT: Yes. Yeah, no, on the concept  
13 of sanctions, which has literally come up today, you  
14 know, especially because this sounds like we're  
15 treading new ground here, and this is -- obviously  
16 has to go in an R&R to Judge Marrero, if you find  
17 authority that you want to make an argument around,  
18 I'm certainly going to give you, Mr. Maloney, time  
19 to respond. Just because, otherwise, it's not to  
20 the benefit of Judge Marrero if I just rule without  
21 a complete fleshing out of this notion of sanctions  
22 because this isn't the typical context in which  
23 sanction -- or a sanctions-like argument would come  
24 up.

25 There's potentially -- I'm just trying to

1 think of an efficient way to get this resolved  
2 quickly, because this case has -- is -- you know,  
3 has been around for a while.

4 One thing that seemed pretty  
5 straightforward from the briefing is I could  
6 potentially give you an answer as to the pre-2020,  
7 the post-2020 in terms of this argument that it  
8 wasn't -- the receiver wasn't diligent, that the  
9 efforts weren't for the benefit of the company, so  
10 everything raised in the briefs up to the corporate  
11 piercing.

12 I could potentially give you a decision on  
13 that and wait for briefing on, you know, whether you  
14 can try to personally seek this -- the difference  
15 that you're missing from Shi. I don't know if  
16 that's an option that the parties would want,  
17 though.

18 MR. KUSHNER: I think that makes sense  
19 because it would help, at least from the receiver's  
20 standpoint, to know what expenses are at issue and  
21 whether it makes sense to actually seek some kind of  
22 contribution from Mr. Shi. I mean, if Your Honor  
23 finds that it's a de minimis amount, for example,  
24 that --

25 THE COURT: Right. It might not be worth

1 your time to -- related to -- so I don't know.

2 Mr. Maloney, did you have a view on that?

3 MR. MALONEY: I also think that it may be  
4 useful to break this up into parts and resolve  
5 what's more easily resolvable now and then, you  
6 know, reserve the other parts for later. I think  
7 the pre-October 5, 2020 expenses may be one of those  
8 issues that are susceptible to, sort of, an interim  
9 report and recommendation.

10 We also submit that the Court should  
11 consider an interim report and recommendation about  
12 return of control of the company. The traditional  
13 standard when a receiver is discharged is that the  
14 receiver remains in office until the accounting is  
15 resolved. We think the Court has the equitable  
16 power to return control earlier. Judge Freeman  
17 found that the reason to continue the receivership  
18 ceased in October 5, 2020, you know, almost three  
19 years ago, and there really is no reason to continue  
20 the receivership for any further period of time.

21 I think also, if the Court is inclined to  
22 break this up into parts and to consider the  
23 pre-October 5, 2020 period, we think it would be  
24 important to know who paid the Seiden Group's legal  
25 fees when they were retained by Baliga to bring this

1 case. We made a submission at Document 435. It's  
2 our contention that Guo actually paid those fees, or  
3 that Guo retained the Seiden Group before this case  
4 was filed. We think the revelation that Guo paid  
5 Greenberg Traurig's fees supports that contention,  
6 and so we think that's a relevant factual issue that  
7 should be fleshed out.

8 THE COURT: Mr. Kushner, did you have a  
9 response just to that? It sounds like we're all  
10 maybe of the opinion that we should take this  
11 piecemeal, which I'm happy to do just to keep things  
12 moving along. But this other notion that -- this  
13 idea of who paid your firm's legal fees, I don't  
14 know if you want to respond to that.

15 MR. KUSHNER: Yeah, Your Honor, I don't  
16 think that discovery should be one-sided. We'd love  
17 to take Dr. Shi's deposition. There are a lot of  
18 things that we'd like discovery on. The notion that  
19 you're just going to open up the receiver's office  
20 to discovery without giving us access to things that  
21 we want and also at this very late stage, we would  
22 oppose that unless it's, sort of, reciprocal.

23 With respect to returning control of the  
24 company back to the board and taking it away from  
25 the receiver, Mr. Shi has repeatedly asked

1 Judge Marrero for that relief, and it's been  
2 repeatedly denied. Judge Marrero has held that the  
3 receiver is going to remain in place until the  
4 accounting is completed. Mr. Shi asked for control  
5 to be returned to the board sooner -- in other  
6 words, before the accounting is completed, and Judge  
7 Marrero has rejected that repeatedly. So we  
8 would -- we don't think that -- we think that issue  
9 has already been resolved.

10 THE COURT: Okay. So why don't we do this,  
11 I will issue an R&R that addresses the  
12 reasonableness of the pre- and post-October 2020  
13 fees. So addressing the issue of whether they  
14 were -- you know, the receiver was diligent, whether  
15 their fees and costs incurred were reasonable and  
16 for the genuine benefit of the company. All of that  
17 would be encompassed in an R&R to Judge Marrero.

18 I will not touch the issue of the piercing  
19 the corporate veil. I'll wait for Mr. Kushner to  
20 provide any supplemental authority you'd like.  
21 Given that this seems to be an issue that's somewhat  
22 novel, at least in this procedural context, I'm  
23 happy to give you as many pages as you want to brief  
24 it. And then when that comes in, I can give you as  
25 much time as you'd like to respond to it.

1 MR. MALONEY: Thank you, Your Honor.

2 THE COURT: The one category that we  
3 haven't touched is this -- these separate letter  
4 motions that came in concerning the redacted or  
5 sealed attorney invoices. I can point you to the  
6 relevant ECF numbers, but my recollection of this is  
7 that the receiver filed the attorney invoices under  
8 seal with certain redactions, and Shi is opposing  
9 them being maintained under seal.

10 We reviewed the invoices, and you're  
11 certainly correct, and there's ample case law in the  
12 circuit that says you can -- you know, to the extent  
13 the -- revealing the nature of the -- revealing the  
14 description of the billing would reveal legal  
15 strategy, the motivation for the client to hire the  
16 attorney. Something of substance that's privileged,  
17 that gets redacted. But in our review of the  
18 invoices, there seemed to be some things that  
19 were -- that did not fall into that category. And  
20 so I'm just flagging it for you that, for resolution  
21 of that issue, it's likely that you're not going to  
22 be able to keep all the invoices under seal, that  
23 it's going to require some more narrowly tailored  
24 redactions to the descriptions of the work, that it  
25 would actually reveal, you know, privileged -- the

1 substance of privileged communications, the  
2 motivations for the attorneys' retention or legal  
3 strategy, something that's tied to the actual  
4 attorney work product provided as opposed to --  
5 there were some that just seem like you could --  
6 there wouldn't be disclosure of that type of  
7 information if it wasn't -- if it was disclosed.

8 Does that make sense?

9 MR. KUSHNER: Yes.

10 THE COURT: Okay. So since this is the  
11 approach I think we've all, sort of, settled on, on  
12 the reasonableness of these expenses, the parties  
13 briefed this, so I didn't really have any questions.  
14 I'm happy to hear from anyone if you want to touch  
15 upon it, but really the main question was this idea  
16 of piercing the corporate veil.

17 MR. KUSHNER: With respect to the -- just  
18 in terms of the sequence of events, Your Honor --

19 THE COURT: Yes.

20 MR. KUSHNER: -- can we submit the  
21 supplemental brief on the piercing issue after we've  
22 seen your report and recommendation?

23 THE COURT: Yes, because I do think it  
24 makes sense depending on the outcome. If you don't  
25 want to expend the fees to do that, that seems

1 perfectly reasonable.

2 The one thing I forgot to mention also  
3 related to the reasonableness of the attorney fees  
4 is -- so the invoices include attorney initials, or  
5 what I'm assuming are attorney initials. Perhaps  
6 there might be some paralegal initials. But there  
7 was no -- I looked at the various declarations, but  
8 there's no declaration that explains, like, you  
9 know -- I don't -- I'm going to take initials. So,  
10 like, JEW was a senior associate with X level of  
11 experience and something to justify the hourly rate.

12 We looked back -- I know some of these  
13 expenses had been previously approved in various  
14 orders by Judge Marrero that were filed under seal  
15 in the vault. We pulled those, and for some of  
16 them, the underlying invoices, we couldn't find. So  
17 either they were maintained in chambers and have  
18 since -- we couldn't get a hold of them. And for --  
19 and then for, I think, one or two that we saw, there  
20 still wasn't an explanation as to, you know, this  
21 initial represents a partner's work, 15 years of  
22 experience, an expert in this field, et cetera;  
23 something to allow us to judge the reasonableness of  
24 the hourly rate for the individuals.

25 So that was something I wanted to ask about

1 because, otherwise, it becomes hard to judge whether  
2 the hourly rate is reasonable if I don't know who's  
3 performing the work, or the experience and  
4 background of the person performing the work.

5 MR. KUSHNER: Your Honor, we could submit a  
6 supplemental declaration explaining who the  
7 timekeepers are, what their initials are, and levels  
8 of experience and other support for the hourly  
9 rates.

10 THE COURT: It doesn't -- it's -- so it --  
11 you know, I'm not trying to add on to your expenses.  
12 It doesn't have to be super complex, but I just need  
13 something to be able to say, you know, the \$600 rate  
14 was attributable to a senior associate with X years  
15 of experience. I mean, obviously, I can -- we can  
16 pull the cases, but there's -- you know, typically,  
17 what courts will say is, in this district, that type  
18 of -- those years of experience and that type of  
19 rate is reasonable. But I couldn't -- without  
20 knowing who the person was that was charging the --  
21 for example, the \$500-an-hour rate, I wouldn't be  
22 able to make that reasonableness determination.

23 MR. KUSHNER: Okay. So we will submit  
24 something. Could it be just a letter?

25 THE COURT: Yes.

1 MR. KUSHNER: Okay.

2 THE COURT: Yeah.

3 MR. KUSHNER: Thank you.

4 MR. MALONEY: Your Honor, one more point on  
5 that issue, specifically the reasonableness of the  
6 pre-October 5, 2020 expenses. I think Your Honor  
7 has pretty comprehensively addressed the issues  
8 relating to the professional fees that are claimed,  
9 but some of the records submitted yesterday also  
10 relate to that period. Some of these records relate  
11 to the expenses that Mr. Guo was claiming  
12 reimbursement for. And although these voluminous  
13 records were filed yesterday, we've identified some  
14 issues that we're concerned about.

15 So, for example, some of these records  
16 appear to show transfers out of the same China  
17 Merchants Bank account that Guo claimed was empty  
18 when he obtained control of it. So, for example,  
19 this is page 22 of ECF 448-2. Appears to show a  
20 transfer out of that China Merchants Bank account on  
21 September 24, 2020 for airfare. There's no  
22 supporting documentation for what that airfare was  
23 necessary for. Guo has stated in numerous papers  
24 that that account was empty when he obtained control  
25 of it, but he's now claiming reimbursement for funds

1 transferred out of that account. He's also stated  
2 in papers that he never submitted -- or, I'm sorry,  
3 deposited into that account the 1.5 million he  
4 claims to have lent to the receivership.

5 There's another issue that we found. This  
6 is at --

7 THE COURT: Actually, Mr. Maloney -- and  
8 this might be a question for the receiver. But in  
9 the Seiden declaration, I thought there was a  
10 paragraph -- I believe it's 40 -- the receiver's  
11 accounting does not include Mr. Guo's fees and  
12 expenses because he had been disappeared, but he was  
13 gone for a while.

14 MR. MALONEY: That is a good point,  
15 Your Honor, and it's a little unclear what's going  
16 on here. The receiver has claimed certain expenses  
17 in his November 2022 accounting. It appears that  
18 one position they may be taking is that all the  
19 expenses claimed by Guo for that period are  
20 reasonable because they were converted into Class B  
21 shares of LKM. And so I think that's an issue that  
22 needs to be part of this decision of what's broken  
23 up into these periods.

24 THE COURT: But --

25 MR. MALONEY: In other words, would your

1 decision address only the expenses claimed by the  
2 receiver in his November 18 accounting for that  
3 period and leave open the issues as to whether  
4 Guo's -- the shares issued to Guo for claims for  
5 that period are reasonable and necessary?

6 THE COURT: But wasn't that already  
7 approved as part of a note agreement by  
8 Judge Marrero?

9 MR. MALONEY: Judge Marrero approved that,  
10 but also as part of that approval, directed that  
11 copies of those papers be served on counsel,  
12 including me. They were not. And so that was  
13 essentially an ex parte application that we've never  
14 had an opportunity to contest until now, until  
15 Your Honor ordered that those papers be unsealed.  
16 This is the first opportunity we've had to address  
17 those issues.

18 THE COURT: But I'm just --

19 MR. KUSHNER: Your Honor, I -- and I  
20 actually, kind of, agree with counsel for Shi to  
21 some extent on this. After the accounting was  
22 submitted, we disclosed the note agreement, and  
23 Shi's counsel filed papers essentially seeking to  
24 undo the issuances of shares to Mr. Guo on the basis  
25 that there were irregularities with his expenses, so

1 on and so forth. And actually, Judge Marrero, in  
2 response to that, said that the issue of Mr. Guo's  
3 expenses is going to be determined by Your Honor in  
4 connection with the accounting.

5 So even though Mr. Guo's expenses were not  
6 included in the accounting as originally submitted  
7 last year, we've now supplemented the record just in  
8 the last few days to include documentation of  
9 Mr. Guo's expenses. And it appears that  
10 Judge Marrero is envisioning that Your Honor will  
11 review those expenses as well for reasonableness.

12 THE COURT: So let me just make sure I'm on  
13 the same page with everyone.

14 ECF 448 is what the receiver filed on  
15 June 26th with the certified translation of expenses  
16 from 2019 through 2021, and those are the ones you'd  
17 like me to review as part of this accounting to  
18 determine whether they were appropriately incurred  
19 by Mr. Guo?

20 MR. KUSHNER: Yes. And in addition to 448,  
21 there's Mr. Guo's affidavit; 443, I believe. Or,  
22 I'm sorry, 443-7, which provides Mr. Guo's  
23 description of what he was doing and why he was  
24 incurring those expenses. So it should be read  
25 together with Mr. Guo's -- that declaration and all

1 other declarations submitted by Mr. Guo.

2 THE COURT: Okay. And...

3 MR. MALONEY: Your Honor, if I may respond.

4 THE COURT: Yes.

5 MR. MALONEY: So I believe the order by  
6 Judge Marrero that we've been discussing is at  
7 Docket 440, and I believe -- I mean, the order  
8 speaks for itself. Your Honor will have an  
9 opportunity to consider that.

10 I agree with Mr. Kushner that I -- it  
11 appears that Judge Marrero is envisioning that the  
12 particular issue of awarding to Guo Class B shares  
13 of LKM as reimbursement for these claimed expenses  
14 is an issue that he would like Your Honor to decide.  
15 Some of those expenses do relate to the  
16 pre-October 5, 2020 period.

17 And so what I would submit is that we break  
18 it up into different parts, right. So Your Honor  
19 could address the professional fees included in the  
20 original November 2022 accounting for that period as  
21 one discrete issue, and then address the issue of  
22 Guo's, you know, reimbursement through shares as a  
23 separate issue. And I think that's necessary here  
24 because we haven't really had a chance to fully  
25 respond to the paper submitted yesterday.

1           THE COURT: Well, no, I think it's  
2           necessary for a lot of reasons, but, certainly,  
3           again, you know, the -- there's voluminous -- just  
4           looking at the June 26th submission, it's quite  
5           voluminous. And it really wasn't touched upon, for  
6           obvious reasons, because it wasn't part of the  
7           accounting sought in November of 2022. So there's  
8           no way I can give you a decision on that without any  
9           type of -- you know, I'm going to call it briefing,  
10          but it may not -- you know, we're just -- it may not  
11          come to a full-on briefing because, again, I don't  
12          need people to incur unnecessary expenses, but I  
13          need more than just the one-page letter with all the  
14          receipts in English, right, just to understand them  
15          because, for instance, you point out the airfare,  
16          you know, how am I supposed to tell you that's a  
17          reasonable expense without any context?

18                 So I think the approach that we've talked  
19          about, which, again, I'm happy to work with the  
20          parties, so if there's some other approach that you  
21          think is more efficient, you should definitely let  
22          me know. But I can give you -- I can give you an  
23          order on the accounting, as requested, in November  
24          of 2022, which involved just Seiden Law Group's  
25          expenses, right? Because you didn't seek the -- you

1 didn't seek recovery of Guo's expenses.

2 MR. KUSHNER: That's right. It was  
3 primarily Seiden Law, but other --

4 THE COURT: Right. I know there was  
5 Kobre & Kim and various other entities, but,  
6 basically, the motion doesn't mention -- and, in  
7 fact, it's clear that you're not seeking an  
8 accounting of Guo's fees and expenses, so I can give  
9 you an answer as to that. We're going to separately  
10 touch upon, once you see the decision on that,  
11 potentially, the piercing the corporate veil  
12 argument. And then we should potentially discuss  
13 how you want to touch this issue of Guo's expenses.

14 MR. MALONEY: I -- that sounds like a  
15 reasonable approach to me, Your Honor.

16 And then with respect to Guo's expenses,  
17 obviously, the papers are voluminous. We've  
18 identified a few issues, but we will need some time  
19 to address that. We -- some of our prior briefing  
20 before Marrero has touched on some of these issues,  
21 which resulted in Docket 448, so some of that is  
22 already on the record. You know, I think we'll just  
23 need some time to prepare a response to what was  
24 filed yesterday.

25 THE COURT: So why don't we do this, to the

1 extent you're just relying on things previously put  
2 in the record, you can just point me to the ECF  
3 citation. You don't have to restate it. But if you  
4 just could, you know, make it easier and just tell  
5 me where you want me to go look for your arguments,  
6 I can certainly go do that.

7 Mr. Maloney, I'm happy to give you as much  
8 time as you need.

9 And then if you'd like a response,  
10 Mr. Kushner, I'm happy to give you as much time on  
11 that.

12 MR. KUSHNER: Yes, Your Honor, we would  
13 like an opportunity to respond. And I think this  
14 procedure makes sense in the sense that Mr. Shi's  
15 counsel should submit objections to the expenses  
16 that Mr. Grove has submitted, and then we can  
17 respond as objections.

18 THE COURT: Right. Does that work for  
19 everyone?

20 MR. MALONEY: Yes.

21 MS. FELICELLO: May I ask you -- sorry.

22 THE COURT: Yes.

23 MS. FELICELLO: This is Roseanne.

24 The one thing -- as Your Honor mentioned,  
25 we don't have a lot of the backup for these

1 invoices, so we'll have airfare as an invoice, but  
2 we won't have any context for why the airfare was  
3 incurred. Also, lots of hotel expenses with no  
4 backup for why it was incurred. So I think it makes  
5 more sense to have the receiver's office put in some  
6 explanation as to why they claim these expenses are  
7 legitimate before -- otherwise, you know, there just  
8 is no basis. So I think they should have to make a  
9 submission first that we then respond to.

10 THE COURT: Well, for, I guess...

11 MR. MALONEY: An alternative, Your Honor,  
12 is if we provide the first response to the paper  
13 submitted yesterday, the receiver provides an  
14 opposition or something of further support, and then  
15 we provide some sort of a reply.

16 THE COURT: Well, the other thing I was  
17 just thinking is -- I think what Mr. Kushner had  
18 indicated was, it's not just the submission at 448  
19 from yesterday, but it's also Guo's declaration at  
20 443, which taken together, could potentially explain  
21 the expenses at 448. So I think I would -- I guess,  
22 for purposes of raising your objections, I would  
23 look at 448 and Guo's declarations at -- certainly,  
24 at 443-7, which is the one you pointed to, and then  
25 you obviously know the record better, so if there's

1 any other Guo declaration where he explains his  
2 expenses.

3 MR. KUSHNER: Yeah.

4 THE COURT: I'm happy to give you as much  
5 time as you want on these objections. And then  
6 again, I'm happy to give you a reply.

7 MR. MALONEY: Thank you. Thank you, Your  
8 Honor. I think we can work out a briefing schedule  
9 together.

10 MR. KUSHNER: Yes.

11 THE COURT: The only thing before you end  
12 up going -- the only thing I forgot to ask was the  
13 issue I brought up with regards to the invoices for  
14 Seiden Law Group. You have the same sort of problem  
15 with Kobre & Kim, where I think, there, they gave me  
16 a flat rate for the associate and a flat rate for  
17 the partner. But for instance, the partner is  
18 easier for obvious reasons. But for the associate,  
19 you know, I think it -- I think the flat rate was  
20 something around 600. But that might be reasonable  
21 for a senior associate. Might not be so reasonable  
22 if it's a junior associate billing at that rate. So  
23 I just need to know for the entries, you know, the  
24 level of experience that I'm dealing with to assess  
25 whether the rate is reasonable.

1 MR. KUSHNER: So it's Seiden Law and  
2 Kobre & Kim?

3 THE COURT: Right. So I think the two --  
4 and the receiver's Cayman Island counsel, KSG.

5 MR. KUSHNER: Okay.

6 THE COURT: And this doesn't have to be  
7 complex, just a declaration or a letter that  
8 explains, like, these initials correspond to this  
9 person and this person's years of experience.

10 MR. KUSHNER: Understood, Your Honor.

11 MR. MALONEY: Okay.

12 MR. KUSHNER: We'll do that.

13 THE COURT: So why don't we do this, I'll  
14 work on getting you the R&R, as we discussed, based  
15 off of the November 2022 accounting. In the  
16 meantime, if the parties want to meet and confer and  
17 come up with a briefing schedule on Guo's expenses,  
18 or Guo's expenses, and a briefing schedule on the  
19 piercing the -- if you -- well, that actually will  
20 come later, right, once I issue the R&R.

21 MR. KUSHNER: Okay.

22 THE COURT: Did I miss anything?

23 MR. KUSHNER: No, Your Honor.

24 THE COURT: Okay.

25 MR. KUSHNER: That's it.

1 MR. STRAW: Just to clarify the briefing  
2 schedule on the piercing the corporate veil, do you  
3 anticipate that coming after resolution of Guo's  
4 expenses as well? Because, obviously, if there is  
5 an issue with the shares, then there's the question  
6 of what happens with that. Just a sequencing  
7 question.

8 THE COURT: Yeah, no, that's makes a --  
9 that's a good point, although --

10 MR. MALONEY: From my point of view,  
11 Your Honor, I -- sorry. I didn't mean to interrupt.

12 THE COURT: No.

13 MR. MALONEY: From my point of view, if the  
14 shares were validly issued, then they came from the  
15 estate to the corporation, and if they were not,  
16 then they can simply be canceled. So I'm not sure  
17 those would necessarily impact plaintiff, but I may  
18 need to give that a little bit more thought.

19 THE COURT: I just -- I read the -- I don't  
20 know the note agreement provides for something other  
21 than the -- so if he doesn't get reimbursed through  
22 the issuance of shares, I don't know if there was  
23 ever some type of other recovery, like, discussed.

24 MR. MALONEY: Yeah. We will, obviously,  
25 identify our prior papers, but from our point of

1 view, repayment was contingent upon an event  
2 happening that never occurred, and so Guo was never  
3 entitled to repayment. We've briefed that, and I  
4 won't go into depth about that here because I know  
5 you really haven't had a chance to review that, but  
6 we'll identify that in the papers.

7 THE COURT: So, I guess, to answer  
8 Mr. Straw's question, it sounds like, potentially,  
9 it might make sense to address Guo's expenses first  
10 before doing the piercing the corporate veil. I  
11 don't know if you -- if --

12 MR. KUSHNER: Yeah, because I think it  
13 doesn't make sense to talk about piercing until we  
14 know what liabilities are out there. You may, for  
15 example, find that only a certain portion of Guo's  
16 expenses are reimbursable.

17 THE COURT: Sure.

18 MR. MALONEY: Your Honor, could I ask a  
19 point of clarification? I'm sorry.

20 THE COURT: It's okay.

21 MR. MALONEY: Your Honor brought up the  
22 issues with the invoices and attorney fees and time  
23 entry and things like that. Will we have an  
24 opportunity to review the portions that are unsealed  
25 even on, like, an attorneys' eyes only basis?

1     Because we, obviously, haven't had a chance to  
2     review them.

3             THE COURT:   Yeah.   So my understanding --  
4     and you should correct me if I'm wrong -- was that  
5     all the invoices were filed under seal.   And I think  
6     what I had indicated was that that was too broad,  
7     and you're going to have to submit redactions.

8             MR. KUSHNER:   Okay.

9             THE COURT:   So you'd be able to see  
10    everything that's unredacted because it wouldn't  
11    lead to the discovery of, like, either privileged  
12    information or information that relates to a legal  
13    strategy or anything of that sort.

14            MR. MALONEY:   Right.   Okay.

15            THE COURT:   But to the extent they have a  
16    valid redaction that would reveal something like  
17    legal strategy or why an attorney was retained, I  
18    think there's ample Second Circuit case law that  
19    says that's -- that would still remain redacted and  
20    privileged.

21            MR. MALONEY:   Okay.   Thank you.

22            MR. KUSHNER:   Yeah, just -- I'm told that,  
23    Your Honor, Mr. Guo did not fund any portion of  
24    Seiden Law's initial retainer in terms of the start  
25    of this case.   It was the shareholders, different

1 people, not Mr. Guo, just to respond to that  
2 contention from a few minutes ago.

3 THE COURT: Okay. Is there anything else  
4 either side wants to raise?

5 MR. KUSHNER: Yeah, just, sort of, a  
6 philosophical point, Your Honor.

7 The receiver is an officer of the court.  
8 The receiver is not a party to this case. We  
9 believe that everything that the receiver's office  
10 has done has been -- everything material has been  
11 approved by the Court. We've gone out of our way to  
12 notify the Court of everything that we were doing.  
13 It seems as if, recently, the receiver's office is  
14 being treated like a party. I'm thinking  
15 specifically of Judge Marrero ordering us to pay out  
16 of pocket for the cost of the translation of some of  
17 the invoices that we -- you know, the  
18 Chinese-language invoices.

19 THE COURT: Was this at 440 or --

20 MR. KUSHNER: Yes.

21 THE COURT: Okay.

22 MR. KUSHNER: I just wanted to just note  
23 that for the record. And it's really -- you know,  
24 it's an unfunded receivership at this point. We are  
25 working without any kind of compensation, so just

1 want to note that for the record. And to the extent  
2 we're being asked to put together submission after  
3 submission after submission, we just don't want the  
4 Court to lose sight of the fact that this is really  
5 an unfunded receivership.

6 Yeah, my colleague wants to add a point.

7 THE COURT: Sure.

8 MR. ZHANG: Your Honor, this is Xintong  
9 Zhang on the record. I just want to -- following up  
10 with Mr. Kushner's question about the cost because  
11 in order to respond to -- I'm assuming in order to  
12 respond to Maloney -- Mr. Maloney's response on  
13 behalf of Shi, we have to provide even more  
14 additional document to be translated from Chinese  
15 language to English being certified translated.

16 For example, we probably need to translate  
17 Mr. Shi's action in China in late 2019 against  
18 illegal shareholder meeting resolution before  
19 Chinese court that's, kind of, caused receivers  
20 additional work in response to that type of claims,  
21 the similar claims, kind of -- again, at least,  
22 like, five to six, to my best of recollection, that  
23 can -- receiver needs to be additional cost and  
24 expenses to provide that translation to be certified  
25 translated as well.

1           THE COURT: Is there something you want  
2 to -- is there something you propose instead?

3           MR. KUSHNER: Well, we -- you know, if we  
4 feel that, in order to respond to some of the  
5 objections which come out of the process that the  
6 Court has just ordered, we need to incur massive  
7 out-of-pocket expenses for things like translation.  
8 And we would ask for Mr. Shi to contribute to that,  
9 you know, especially because he's the one  
10 challenging these expenses.

11           You know, it's just a very unjust situation  
12 that a court-appointed receiver who's not a party is  
13 effectively being asked to go out of pocket to cover  
14 the cost of the defendant's objections to the  
15 receiver's expenses. It's just -- frankly, it's --  
16 we're not aware of any precedent for this, that a  
17 court orders a receiver to go out of pocket to  
18 conduct the functions of the receivership.

19           THE COURT: So I -- that's a fair point,  
20 and I'm certainly not trying to have you incur more  
21 expenses than you've already incurred, but to the  
22 extent we're talking about responding to -- for  
23 instance, just in this limited -- because it sounds  
24 like where you're going to -- might potentially have  
25 to incur more expenses is responding to the

1 objections of Guo's, or Guo's, expenses.

2 Is there -- this might just be simple if  
3 you can just point me to any case that says that, in  
4 such circumstances, the court-appointed receiver  
5 shouldn't go out of pocket for those expenses.  
6 Since you said you're aware of no precedent where  
7 it's the case that the court would require the  
8 receiver to incur those costs, can you point me to  
9 any case that would say that?

10 MR. KUSHNER: Well, Judge Marrero, sort of,  
11 touched on this in his order on the translation  
12 issue, and he said that the receiver can bring a  
13 motion for reimbursement, that -- as we read  
14 Judge Marrero's order, he thinks this is a serious  
15 issue and that -- he cited Rule 37.

16 THE COURT: Yeah.

17 MR. KUSHNER: But again, you know, we have  
18 to go out of pocket and then file -- bring a motion.  
19 And, of course, we're -- the legal fees incurred in  
20 preparing a motion for reimbursement of attorneys'  
21 fees are themselves unfunded. So it's -- it puts us  
22 in a difficult position, Your Honor. But we could  
23 search for alternative authority, but I do think  
24 Judge Marrero has spent a fair bit of time on this  
25 issue.

1           THE COURT: So I have Judge Marrero's order  
2     at page 3, where he talks about the proper procedure  
3     is not through an advance, right, but through the  
4     motion for reimbursement after these costs are  
5     incurred.

6           MR. KUSHNER: He did say that, and he cited  
7     some cases. I don't think any of the cases he  
8     cited, though, Your Honor -- respectfully, I don't  
9     think any of them are dealing with court-appointed  
10    receivers.

11          MR. MALONEY: Your Honor, from our point of  
12    view, this goes back to the nature of this  
13    particular proceeding, which is a hearing to  
14    determine the accounting, the receiver, and in our  
15    view, the law is clear that it's the receiver's  
16    burden to justify his account. We think there's  
17    plenty of federal precedent on that. There's  
18    numerous cases on that issue, and the receiver can,  
19    basically, seek reimbursement from the company, if  
20    he can justify that cost, or from the plaintiff who  
21    obtained the receivership. We touched on that issue  
22    earlier. That's our view of the case. Obviously,  
23    Judge Marrero -- I'm sorry -- view of that  
24    particular issue.

25          Judge Marrero stated what he stated in

1 Document 440. I do tend to agree with Mr. Kushner  
2 on the point that the cases cited there are not  
3 really directly on point with the fact scenario we  
4 have here. We think the case law regarding the  
5 receiver's burden to justify his account is the  
6 appropriate authority to look to.

7 The other issue to think about here is that  
8 the receiver is right now, on that issue, justifying  
9 the account of Mr. Guo, and so Mr. Guo should bear  
10 that cost as well.

11 THE COURT: So, Mr. Kushner, I want to  
12 understand exactly what you would envision here.  
13 So -- and I don't mean to suggest because I'm not  
14 open to some other process. I just -- I want to  
15 understand what would make you -- or what would  
16 potentially be an outcome that would not require the  
17 receiver to continue incurring unfunded expenses.

18 So in your -- under your rubric, you  
19 wouldn't want to have to -- or you don't want an  
20 opportunity to, for instance, respond to whatever  
21 Mr. Maloney files, objecting to the filing on Guo's  
22 expenses, or if you are objecting, you would want at  
23 least a portion, if not half of the cost or  
24 something -- some cost-splitting with Mr. Shi?

25 MR. KUSHNER: So here's what I propose, I

1 think a distinction should be made between legal  
2 fees and out-of-pocket costs. It's the  
3 out-of-pocket costs that we're really concerned  
4 about. If he's objecting to Mr. Guo's expenses and  
5 he's requiring us to go out and get translations of  
6 all these Chinese-language documents, hundreds of  
7 pages, or thousands of pages, and we have to go out  
8 of pocket, as we already have, and then the Court  
9 later determines that all those expenses were  
10 reasonable and overrules his objections, the concern  
11 we have is that if we then bring a motion for  
12 reimbursement of our expenses, his client could just  
13 disappear and we'd have no way of ever recovering  
14 those out-of-pocket costs. We don't know where his  
15 client is. It's not -- his client is not here.  
16 He's never appeared in this court.

17 So what we would propose is that he submit  
18 an amount in escrow in the amount of the  
19 out-of-pocket costs that the receiver has to incur  
20 in responding to his objections.

21 THE COURT: But only the costs related to  
22 things like translation services, not legal fees.

23 MR. KUSHNER: That's correct. I think if  
24 we're going to talk about legal fees, you know, it  
25 would be in the several millions of dollars, and

1 perhaps we can get that -- get to that at a later  
2 stage, you know, when we're dealing with the  
3 piercing of the corporate veil. But at this point,  
4 we're most concerned with the out of pocket.

5 THE COURT: And let me just ask you -- that  
6 was not a proposal you gave to Judge Marrero when he  
7 issued -- before he issued 440, the ECF order --  
8 order at ECF 440?

9 MR. KUSHNER: It was not. This is the  
10 first time. You -- because you invited me to make a  
11 proposal, and this is -- yeah.

12 THE COURT: I just want to make sure it  
13 wasn't something he rejected.

14 MR. KUSHNER: It was not.

15 THE COURT: Okay.

16 MR. KUSHNER: We didn't ask. We did ask  
17 that Shi be ordered to pay those expenses, but we  
18 didn't propose this specific mechanism of putting  
19 them in escrow.

20 THE COURT: Right. Mr. Maloney, did you  
21 want to respond, or is it just the same response you  
22 had given before?

23 MR. MALONEY: Basically, yes, Your Honor.

24 THE COURT: Okay.

25 MR. MALONEY: It's probably another issue

1       that should be briefed, unfortunately.

2               THE COURT:   And this -- let me just --  
3       ECF 440, does anyone happen to remember the letter  
4       motions or the briefs that led to ECF 440?   Because  
5       rather than brief another issue, it sounds like this  
6       was potentially -- other than this unique escrow  
7       agreement proposal, it sounds like this was already  
8       all before Judge Marrero.

9               MR. MALONEY:   Judge Marrero does cite some  
10       of the relevant docket entries in 440.   So on page 1  
11       and 2 --

12              THE COURT:   Okay.

13              MR. MALONEY:   -- he identifies some of the  
14       prior papers.   I'm not sure if this includes all of  
15       the letters submitted, but it's a good start.

16              THE COURT:   Okay.   So maybe before we go  
17       ahead and order any more briefing, I will take a  
18       look at the documents that Judge Marrero references  
19       to make sure, and I will hold off on giving you a  
20       decision about this potential escrow until I look at  
21       that.   And if I need anything else, I'll reach out.  
22       But I'll -- I'm going to definitely give you a  
23       decision as to, before we tackle Guo's expenses at  
24       448, how that cost will be allocated, or whether  
25       we're going to talk about potentially funding an

1 escrow.

2 MR. KUSHNER: Thank you, Your Honor.

3 THE COURT: Is there anything else you  
4 wanted to raise, or...

5 MR. KUSHNER: No. Thank you, Your Honor.

6 THE COURT: Mr. Maloney?

7 MR. MALONEY: Not at this time. We had  
8 prepared responses to the questions you had stated  
9 in Docket 434, but it sounds like we'll address  
10 those later.

11 THE COURT: Oh, you wanted to reply to what  
12 Mr. -- what the receiver had submitted?

13 MR. MALONEY: Yes. Essentially, yes, but  
14 now that we're --

15 THE COURT: Because I think their letter  
16 came in on Friday was the nine-page letter?

17 MR. MALONEY: Right. Right.

18 THE COURT: If you'd like to respond now,  
19 I'm certainly happy to hear you out.

20 MR. MALONEY: Okay. Well, I mean, we've  
21 touched on some of the issues; for example, the  
22 Greenberg payment and things like that. In that  
23 letter, the receiver, you know, proposed or  
24 submitted a response to your question about the  
25 failure to account for the "onshore entities."

1           I touched on this earlier. Their story has  
2       changed throughout the case, right? They, for most  
3       of the case, claimed that Guo never had control of  
4       these entities. But now, in the June 23rd  
5       declaration, he admits to having control of those  
6       entities and what we've referred to as Beijing  
7       Technology and what they referred to as Beijing  
8       Tianxia. I'm sure I'm not pronouncing that  
9       correctly.

10           But he's had control of those entities  
11       since 2019, but the receiver never accounted for  
12       those entities in the November 2018 -- I'm sorry --  
13       2022 accounting, and they haven't accounted for them  
14       in that February -- I'm sorry -- June 23rd  
15       submission. And I think the clearest evidence of  
16       that is the fact that they've submitted this  
17       cherrypicked record from the China Merchants Bank  
18       account. They've not produced the entire records of  
19       the account, and we've been able to identify at  
20       least a few transactions where Guo has made  
21       transfers out of that account.

22           We have submitted previously, at Docket  
23       394-6, page 3 to 4, public records from China  
24       showing that Beijing Technology, Beijing Tianxia,  
25       holds interest in other companies. You know,

1 Mr. Guo has had control of that entity since July  
2 2019 and has failed to account for its interest in  
3 those other entities. Guo's submission from  
4 yesterday also includes records relating to -- well,  
5 let me back up a little bit.

6 The November 2022 accounting submitted by  
7 the receiver disclosed funds that the receiver  
8 received from an account at Standard Chartered Bank  
9 in the name of, I believe, NQ Infinity. I know  
10 there's a question about the name, but I believe  
11 it's what the receiver calls NQ Infinity. We, now,  
12 know that Mr. Guo has had access to a China  
13 Merchants Bank account held in the name of  
14 NQ Infinity. And the papers submitted yesterday  
15 revealed that there is a third account at Industrial  
16 and Commercial Bank of China held in the name of  
17 NQ Infinity. This was not disclosed until  
18 yesterday. And this is at page 132 of ECF -- I'm  
19 sorry. I apologize. I'm getting tired.

20 This is at Page 132 of Docket 448-2. This  
21 is one of the transfers that Mr. Guo is claiming  
22 reimbursement for. That account has not been  
23 accounted for. That bank account has not been  
24 accounted for. It's an -- should be an asset of the  
25 estate. We don't know anything about it. And

1     whatever was in there, the transactions that  
2     occurred in that account, they should be justified  
3     as made for the purpose of the receivership.

4             There were some cash transactions disclosed  
5     in the papers yesterday. No explanation of where  
6     this cash came from. There's reference to an  
7     agreement with a third party here. This is page 143  
8     of Docket 448-2. Again, no explanation for that.  
9     If the cash belonged to the company, or if it was  
10    supposedly spent on a legitimate receivership  
11    purpose, there should be a record of that, an  
12    explanation, and support for that.

13            Guo now admits in his June 23rd declaration  
14    that he did receive a majority of the shares of  
15    Beijing Technology/Beijing Tianxia. That was the  
16    primary operating company Velcm, before the  
17    receivership was appointed. That's the company that  
18    actually held the technology licenses and operated  
19    the business. Guo now owns that majority.

20            He cites to an arbitration award as a basis  
21    for the transfer of shares to his own personal name,  
22    but Dr. Shi was not a party to that arbitration.  
23    The respondent in that arbitration was Lingyun Guo,  
24    the wife of Henry Lin, who is a party aligned with  
25    Mr. Guo, and they essentially reached a settlement

1 where they would agree to transfer the shares to  
2 Mr. Guo personally. There's no evidence of any  
3 consideration paid by Mr. Guo for that majority  
4 interest in that valuable asset.

5 I think that covers the main points I  
6 wanted to address about the accounting, or lack of  
7 accounting, for the "onshore entities."

8 Regarding the Tongfang note issue, the  
9 receiver repeats many of the assertions he's made in  
10 the past about Dr. Shi controlling Tongfang. The  
11 fundamental question on an accounting is whether the  
12 receiver performed his fiduciary duty to collect on  
13 an asset of the receivership. The Tongfang note was  
14 an asset of the receivership. He admits to making a  
15 demand on Tongfang for payment, but did not pursue  
16 that. He did not commence an arbitration against  
17 Tongfang.

18 You know, the issue of their assertions  
19 that Dr. Shi controlled Tongfang have been litigated  
20 in the past. We understand that. But we want to  
21 point out a couple documents from the record that  
22 are relevant to this point. That's Docket 394-9,  
23 Docket 269-1 at paragraph 19, subparagraph 1. These  
24 documents reveal the true investors in the Tongfang  
25 note. That's Tongfang M&A Fund SP and its

1 investors, Yujiang Hai Wu, Vast Stone Limited, China  
2 Create Capital Limited and Huang Zhao Lin-Qing.  
3 These are the companies that purchased FL Mobile and  
4 agreed to pay the amounts owed under the Tongfang  
5 note. If the receiver had commenced an arbitration,  
6 he would have learned that through the arbitration  
7 and most likely have obtained an award in favor of  
8 the company. He did not.

9 On the application developer accounts, this  
10 is a similar story. The e-mails submitted and the  
11 other records previously submitted show that the  
12 receiver knew as early as 2019 that further action  
13 was required to gain access to the developer  
14 accounts. Exhibit 5 to the June 23rd letter reveals  
15 that they even knew the name of the person, Lou  
16 Rapice, who had access to the accounts, but the  
17 receiver never followed up on that. He never  
18 brought this to the attention of the court in four  
19 years. We submit that that was a breach of the duty  
20 to pursue and preserve that asset.

21 And I think we've already addressed the  
22 other points that I wanted to raise in response to  
23 that letter.

24 THE COURT: Thank you, Mr. Maloney.

25 Unless anyone has anything else...

1           MR. KUSHNER: Just without responding to  
2 everything that was just said, I think a lot of what  
3 counsel just said will be addressed in the upcoming  
4 briefing. With respect to the validity or  
5 reasonableness of Mr. Guo's expenses, we can deal  
6 with that there.

7           Just very briefly, Your Honor, on Tongfang,  
8 I don't think that I heard on the record a  
9 representation as to whether or not Mr. Shi has any  
10 ownership or control interest in Tongfang.

11          THE COURT: So the Tongfang transaction --  
12 because it's just been the subject of not only this,  
13 but there's the China AI suit involving DLA Piper.  
14 I'm very familiar with the Tongfang transaction, so  
15 that's why I didn't really think I needed -- and,  
16 again, the receiver's letter from June 23rd explains  
17 your response on that. So I don't know that I need  
18 to hear anything else on the Tongfang transaction.  
19 I think the submission that you made last week was  
20 very thorough and cleared up any ambiguities I might  
21 have had, or confusions.

22          MR. KUSHNER: Thank you, Your Honor. Then  
23 nothing further.

24          THE COURT: If you'd like to respond, I'm  
25 happy to hear you out, but I'm just -- you know, I'm

1 mindful that I'm not trying to keep you here to  
2 incur more costs.

3 MR. KUSHNER: Nothing further from us.  
4 Thank you.

5 THE COURT: Okay. Anything, Mr. Straw,  
6 or...

7 MR. STRAW: No. Thank you, Your Honor.

8 THE COURT: Thanks so much, everyone. So I  
9 will go ahead -- as we discussed, I'll give you a  
10 decision on the accounting as envisioned based on  
11 our discussions from November of 2022 without going  
12 into Guo's expenses, or Guo's expenses and the  
13 piercing the corporate veil.

14 MR. KUSHNER: Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. MALONEY: Thank you.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Baliga v. Link Motion, Inc., Docket #18-cv-11642, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano

ADRIENNE M. MIGNANO, RPR

Date: June 29, 2023